



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 21, 2018

Ms. Heather Castillo
Counsel for Fort Worth Independent School District
Leasor Crass, P.C.
302 West Broad Street
Mansfield, Texas 76063

OR2018-06482

Dear Ms. Castillo:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 701009.

The Fort Worth Independent School District (the "district"), which you represent, received a request for information pertaining to specified policies, information pertaining to a specified contract, and information pertaining to a specified decision. You state the district will release some information. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the request asks the district to answer questions. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. Open Records Decision Nos. 561 at 8-9 (1990), 555 at 102. We assume the district has made a good-faith effort to do so.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege

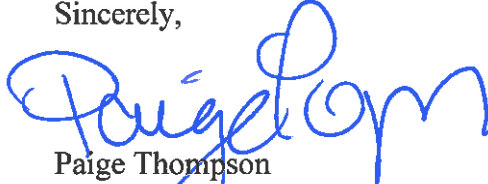
in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “to facilitate the rendition of professional legal services” to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1)(A), (B), (C), (D), (E). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a *confidential* communication, *id.* 503(b)(1), meaning it was “not intended to be disclosed to third persons other than those: (A) to whom disclosure is made to further the rendition of professional legal services to the client; or (B) reasonably necessary to transmit the communication.” *Id.* 503(a)(5). Whether a communication meets this definition depends on the *intent* of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You assert the submitted information consists of communications between attorneys for the district and district employees. You further assert the communications were made for the purpose of facilitating the rendition of professional legal services to the district. You indicate these communications were intended to be confidential and have remained confidential. Based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to the submitted information. Thus, the district may withhold the submitted information under section 552.107(1) of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/tdw

Ref: ID# 701009

Enc. Submitted documents

c: Requestor
(w/o enclosures)

From: Rhonda Crass
Sent: Monday, December 07, 2015 8:23 AM
To: tobi.jackson@fwisd.org
Cc: valerie.carrillo@fwisd.org; Jacinto.Ramos@fwisd.org
Subject: Conflict of Interest
Attachments: 12.4.15 Conflict of Interest Letter.pdf

Ms. Jackson,

Attached please find a letter regarding the above-referenced matter.

Thank you,

RHONDA CRASS
ATTORNEY

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December 4, 2015

Tobi Jackson
Trustee, Fort Worth Independent School District Board
100 N. University Drive
Fort Worth, Texas 76107

Issue.

Whether participating as the director of an after school program for children, (SPARC), in a paid position by the city of Fort Worth presents a conflict of interest.

Brief Answer.

No inherent conflict of interest is presented by virtue of employment by the city in this position, assuming that SPARC does not contract with or otherwise have issues presented before the Board of Trustees for its consideration. If issues do come before the Board of Trustees related to SPARC, the board member may have to abstain from participation, if she has a substantial interest as defined and set out by Chapter 171 of the Texas Local Government Code.

Discussion.

Chapter 171 of the Texas Local Government Code sets out the conflict of interest laws for Texas city and county officials, as well as officials of other Texas political subdivisions, including school board trustees. Chapter 171 also establishes the standard for determining when a local official has a conflict of interest that would affect his or her ability to discuss, decide or vote on a particular item. Chapter 171 covers two types of conflicts of interest:

- (i) Business Entity conflicts: Conflicts due to a local official's substantial financial interest in a business entity that has an issue before his or her governmental unit; *see* TEX. LOC. GOV'T CODE §171.002(a); or
- (ii) Real Property conflicts: Conflicts due to a local official's substantial financial interest in real property that would be affected by his or her governmental unit's action. *see* TEX. LOC. GOV'T CODE §171.002(b).

Substantial Interest

There are four ways that a person could be deemed to have a "substantial interest" in a business entity that would raise a potential conflict of interest. A person has a substantial interest in a business entity if the person has:

- 1) Stock interest: If the official owns 10 percent or more of the total voting stock or shares of the business entity; TEX. LOC. GOV'T CODE §171.002(a)(1)

- 2) Other ownership interest: If the official owns either 10 percent or more, or \$15,000 or more, of the fair market value of the business entity;*Id.*
- 3) Income interest: If the official received more than 10 percent of his or her gross income for the previous year from the business entity; TEX. LOC. GOV'T CODE §171.002(a)(2)
- 4) Close family member with any of the above interests: If a close relative of the local official has any of the above types of interest in a business entity. A local official is considered to have the same interest in a business entity that his or her close relatives have in that business entity. In this context, close relatives of an official would include persons who are related to the official within the first degree by consanguinity (blood) or affinity (marriage). TEX. LOC. GOV'T CODE §171.002. Such relatives would include an official's father, father-in-law, mother, mother-in-law, daughter, daughter-in-law, son, son-in-law and the spouse of the official.

SPARC/conflict of interest test

Being employed by a business entity will prevent a local official from discussing or voting on his or her governmental unit's contract involving that business, provided more than 10 percent of the Official's previous year's income came from his or her employment with that business.

State law provides a two-part test for ascertaining whether a local official has a conflict of interest regarding a business entity that would prevent the official from participating in a vote or discussion on that item.¹⁸ To determine whether a conflict exists that would prevent that official's participation, one should follow the following two-step analysis:

Step one (substantial interest analysis): First, the official must determine if he or she received more than 10 percent of her gross income in the previous year from that business entity or if he or she owns 10 percent or more of the voting stock or shares of the business entity or has some other substantial ownership interest in the business entity. TEX. LOC. GOV'T CODE §171.002(a)(2). If the official has such an interest or a close relative of the official has such an interest, the official must consider the second part of the test for determining if a conflict of interest exists.

Step two (special economic effect analysis): The official must determine whether the action that the local entity is considering would have a special economic effect on the business entity that is distinguishable from its general effect on the public. TEX. LOC. GOV'T CODE §171.004(a)(1). This basically means that if the vote is specific to SPARC, the trustee should not participate in the vote. However, if an issue impacts a number of entities, including SPARC, the trustee may participate.

If it is determined that the official has a substantial interest in the business entity and it is likely that the action would have a special economic effect on the business entity that is distinguishable from its effect on the general public, a conflict of interest would exist.

If a conflict of interest exists, the official is prevented from discussing or voting on an issue involving that business entity and must also file an affidavit with the District regarding the conflict of interest and the nature and extent of her interest in the matter, before any vote or decisions are made in any matter pertaining to the business entity involved. The official must abstain from any discussions regarding the matter and must not vote on any matter involving an entity presenting a potential conflict of interest as described.

Conclusion.

Therefore, assuming that SPARC does not contract with the City of Fort Worth for these services, there appears to be no conflict of interest for a trustee holding the paid position as the Director of the SPARC program. Please let me know if we can be of any further assistance to you.

Sincerely,

A handwritten signature in cursive script that reads "Rhonda Crass".

Rhonda Crass

RC:dv

cc: Jacinto Ramos *via email*
Valerie Carrillo *via email*

Rhonda Crass

From: Rhonda Crass
Sent: Tuesday, December 29, 2015 9:33 AM
To: Carrillo, Valerie
Cc: Jackson, Tobi (School Board Secretary); Ramos, Jr., Jacinto (School Board President); Mike Leasor; Desiree Valladares; Kim Mullins
Subject: RE: Conflict of Interest

You are correct. The conclusion is based upon the assumption that there is no contract between FWISD and SPARC.

RHONDA CRASS
ATTORNEY

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From: Carrillo, Valerie [mailto:Valerie.Carrillo@fwisd.org]
Sent: Monday, December 28, 2015 8:05 PM
To: Rhonda Crass <rhonda@leasorcrass.com>
Cc: Jackson, Tobi (School Board Secretary) <Tobi.Jackson@fwisd.org>; Ramos, Jr., Jacinto (School Board President) <Jacinto.Ramos@fwisd.org>
Subject: Re: Conflict of Interest

Rhonda: Can you please clarify the sentence in the "Conclusion" paragraph regarding SPARC not having a contract with the City of Fort Worth? Did you mean to say assuming there is no contract between SPARC and FWISD?

Valerie A. Carrillo
Chief Legal Counsel
Fort Worth I.S.D.
100 N. University, Ste. SW172
Fort Worth, Texas 76107
(817) 814-1980
(817) 814-1985 fax

On Dec 7, 2015, at 8:23 AM, Rhonda Crass <rhonda@leasorcrass.com> wrote:

Ms. Jackson,

Attached please find a letter regarding the above-referenced matter.

Thank you,

RHONDA CRASS
ATTORNEY

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<Image001.jpg>

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<12.4.15 Conflict of Interest Letter.pdf>

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Heather Castillo

From: Rhonda Crass
Sent: Tuesday, April 26, 2016 3:35 PM
To: Jackson, Tobi (School Board Secretary)
Cc: Carrillo, Valerie
Subject: Conflict of Interest - Opinion
Attachments: FWISD Conflict of Interest to Ms. Jackson 4.26.16.pdf

Ms. Jackson,

Attached please find a letter regarding the above-referenced matter.

Thank you,

RHONDA CRASS
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April 26, 2016

Tobi Jackson
Fort Worth ISD
100 N. University Drive
Fort Worth, Texas 76107

Via Email Attachment: tobi.jackson@fwisd.org

Re: Conflict of Interest

Dear Ms. Jackson:

You have asked my opinion about a possible conflict of interest in regards to your employment as a paid consultant for SPARC. The key issue is whether the conversion of SPARC to a 501C(3) non-profit corporation will create an employment or other business relationship between yourself and Barbara Williams, chairwoman of SPARC's Board of Directors. Ms. Williams is also a partner in the law firm of Linebarger Goggan Blair & Sampson, LLP., which currently holds a contract with Fort Worth Independent School District and plans to seek additional contracts with the District in the future. If it is determined that these factors create an employment or other business relationship between yourself and Ms. Williams, you will need to disclose this interest by filing a conflicts disclosure statement with the FWISD records administrator. My opinion is rendered solely on the information you have provided to me.

The Texas Local Government Code requires a local governmental officer to disclose certain relationships with vendors if the vendor enters into or plans to enter into a contract with the local governmental entity, and the vendor has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500.00 during the 12-month period preceding the date that the officer becomes aware that a contract between the local governmental entity and vendor has been executed or the local governmental entity is considering entering into a contract with the vendor. Tex. Loc. Gov't Code §176.003.

In Section 176.001 (1-a) of the Texas Local Government Code, the term "business relationship" is defined as a connection between two or more parties based on commercial activity of one of the parties, except for connections based on (1) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or agency; (2) a transaction conducted at a price and subject to terms available to the public; or (3) a purchase of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency. These exceptions do not apply to this particular set of facts.

April 20, 2016

Page 2

In looking at the ordinary meaning, a Texas case does provide some information as to the definition of "business." See Hallman v. Allstate Ins. Co., 114 S.W. 3d 656 (Tex. App.—Dallas 2003), *rev'd*, 159 S.W.3d 640 (Tex. 2005). In the context of an insurance policy insuring loss incurred in the business of the insured, the court examined the meaning of the terms "trade," "profession," and "occupation," used in the policy to define business. See *id.* at 662. The court said that the common thread of business was the idea that "a livelihood or means of earning a living" motivated the activity. *Id.* The Attorney General's office stated in 2005 that the term business "commonly connotes activity for commercial profit." Tex. Att'y Gen. Op. No. GA-0375 (2005) at 3; see also Tex. Att'y Gen. Op. No. DM-310 (1994) at 3. Moreover, section 176.003(a)(2)(A) provides that the "business relationship" must result in taxable income." Tex. Loc. Gov't Code Ann. §176.003(a)(2)(A) (Vernon Supp. 2005).

Based on an analysis of these definitions, it is my opinion that a business relationship will exist between you and Ms. Williams only when SPARC converts to a 501C(3) status, generates taxable income to you that exceeds \$2,500.00, and Linebarger seeks or plans to seek additional contracts with FWISD. This will trigger the reporting requirements of Chapter 176 of the Texas Local Government Code. However, prior to that conversion, there is no relationship that would trigger any reporting requirements. Furthermore, you are not required to abstain from any vote regarding any Linebarger Goggan Blair & Sampson contracts with Fort Worth ISD either prior to SPARC's conversion or after you file the conflicts disclosure statement. That being said, you may choose to abstain to avoid the appearance of any impropriety.

If you have any additional questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Rhonda Crass".

Rhonda Crass

RC:dv